IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 3414 of 1991

1. Smt.Kamalabai Mohan Pardeshi
age 47 years, Occ: Labour

2. Sunil Dattatraya Mahale
a heir of Dattatraya Bandu
Mahale (since deceased) age
61 years, Occ: service.

3. Smt.Shakuntala Jagannath
Pardeshi, age 47 years,
Occ: Labour ..Petitioners

vs.

1. Nasik Municipal Corporation

2. Gangadhar Dattatraya Bele
Age 52 years, Occ: Priest

3. Prabhakar Dattatraya Bele
Age 54 years, Occ:Service

4. Sadashiv Dattatraya Bele
Age 29 years,Occ: Nil
Nos. 2 to 4 residing at
2065, Delhi Darwaja,
Nashik ..Respondents

Smt.Smita Mane i/b Shri Prafulla Shah for petitioner
Shri S.M.Gorwadkar for respondent no.3.

CORAM: S.B.MHASE J.
7th March, 2006

ORAL JUDGMENT:

1. The petitioners have approached this Court invoking the jurisdiction of this Court under Article 227 of the Constitution of India thereby challenging the order passed in

Reg.Civil Suit No.905 of 1982 by the Joint Civil Judge Sr.Dn., Nashik and the judgment and order passed by the District Court in Reg.Civil Appeal No.510 of 1987 on 10th July, 1991. The petitioners are the original plaintiffs. The respondents in this petition are original defendant nos. 1 to 4. Initially there were 5 plaintiffs. However, plaintiff nos. 2 and 5 have not approached this Court even though they were parties before the Trial Court and the Appellate Court. Thus, plaintiff nos. 2 and 5 have accepted the decrees passed by the Courts below. Respondent no.1 is the original defendant no.4 while respondent nos. 2, 3 and 4 are original defendant nos. 1 to 3 respectively. Respondent nos. 2 to 4 are the landlords of House No.2003 situated in Somwar Peth, Nashik while the petitioners are the tenants of the said premises. It is three storeyed building and is very old one i.e. the building appears to have been constructed during the period of Peshawas. According to the petitioners, the said building is in sound condition. However, in order to evict the petitioners from the said premises respondent nos. 2 to 4 have colluded with respondent

no.1 Municipal Corporation and have pulled down the portion of the said building. Therefore, the petitioners approached the Civil Court by filing the above referred suit for injunction against the respondents. The respondents in turn have appeared in the suit and have contested the suit pointing out that the eastern portion and northern wall of the said building is in dilapidated condition. It is further pointed out that the owner of the adjoining building Shri Kinge has also complained in respect of collapse of the northern side wall and, therefore, the building has become dangerous for human habitation. The Trial Court has found on facts that the building is in dilapidated condition and thereby has dismissed the suit. In appeal also the Appellate Court has gone through the evidence on record and has come to the conclusion that the building is in dilapidated condition and dismissed the appeal. This Court admitted the petition on 6th September, 1991.

2. I have heard Shri Shah, learned counsel for the petitioner. He submitted that since 1984 till today there is a prohibitory order

as against the respondents and the building is still standing and that itself is evidence and to say that the building is in sound condition and that the findings recorded by the courts below are incorrect. Shri Gorwadkar submitted that it is not that. We do not know that. He submits that looking to the dilapidated condition of the building the building must have been fallen by this time. He submitted that the case will have to be analysed on the basis of the material which was considered by the courts below.

3. It is revealed on going through both the judgments that both the courts have found that the relationship between the parties as that of the tenant and landlord is accepted. It is further admitted position that there is a statutory liability on respondent no.1 that in case it is found that the building is in dilapidated condition or that it is not fit for human residence, they have to pull it down by following the procedure as provided in the Municipal Corporation Act, 1888. It is admitted position from the cross examination of the petitioner that eastern side wall of the building is collapsed and the suit

building is likely to collapse at any stage. Therefore, in view of this admission I find that the contention that the building is suitable for human residence is without any merit. It is further found that the respondent Corporation has not taken steps to pull it down immediately but they have inspected the site by deputing their Junior Engineer who prepared the report. The said report is placed before the Trial Court at Exh.44 which was considered by the Trial Court and then the Trial Court came to the conclusion that the action of the respondent Municipal Corporation is justifiable. There is no dispute about the fact that even the adjoining tenant Shri Kange has also informed the Municipal Corporation. It is also admitted fact that the owner has also issued notice to the petitioners to vacate the said premises since the building is in dilapidated condition. Considering the material on record both the Courts below were justified in coming to the conclusion that the building is in dilapidated condition and not suitable for human residence. Therefore, the findings recorded by the Trial Court that the suit filed by the petitioner is without merit is

justifiable. What this court finds that both the Courts below have considered the question of fact in the light of the evidence on record and nothing has been pointed out to this Court to interven in the findings of fact. It is to be noted that the finding is based on preponderance of the possibility and no perversity has been pointed out to this Court. As such the petition is without any merit. It deserves to be dismissed and is dismissed accordingly. Rule is discharged. Interim order stands vacated. No order as to costs.

(S.B.MHASE J.)